

## STATE OF DELAWARE

V.

CHRISTOPHER R. DESMOND,

Defendant.

ID# 91009844DI

Submitted: May 29, 2019

Decided: July 10, 2019

On Defendant’s “Motion for Constitutional Decision.”

On Defendant’s “Motion to Declare Delaware’s Sentencing Structure in Violation of the Eighth Amendment [etc.]”

**DENIED.**

## ORDER

Maria T. Knoll, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

Christopher R. Desmond, Smyrna, Delaware, Defendant, *pro se*.

COOCH, R.J.

This 10th day of July, 2019, upon consideration of Defendant's Motions, it appears to the Court that:

1. On November 9, 1992, a Superior Court jury convicted Defendant of twenty-nine criminal charges, including ten counts of Robbery in the First Degree and ten counts of Possession of a Deadly Weapon During the Commission of a Felony, as well as other related offenses. On January 15, 1993, Defendant was sentenced to more than seventy-eight

years in prison. The Delaware Supreme Court affirmed Defendant's convictions and sentences on direct appeal.<sup>1</sup> Since his convictions, Defendant has filed numerous motions seeking postconviction relief, habeas corpus relief, and modification of his sentence.<sup>2</sup> Now Defendant again seeks postconviction relief by attacking the constitutionality of his sentence.

2. On May 2, 2019, Defendant filed a motion titled "Motion for Constitutional Decision." In this motion, Defendant argues that the Superior Court's "failure to appoint him ... counsel" violated "Delaware's Constitutional Right to Counsel" and Article 1, Section 7 of the Delaware Constitution. On May 25, 2019, Defendant filed a second motion titled "Motion to Declare Delaware's Sentencing Structure in Violation of the Eighth Amendment of the United States Constitution in that it Creates Disproportionate Sentencing for Defendants who are Similarly Suited Because of Age and Status and Time of Sentencing." From what the Court can understand, Defendant argues that certain Delaware sentencing statutes unconstitutionally discriminate against non-habitual offender adult defendants sentenced to consecutive prison terms that amount to an effective life sentence.<sup>3</sup> Defendant now submits to the Court what are essentially his thirteenth and fourteenth motions for postconviction relief, albeit with unique titles. However titled, the substance of Defendant's motions demands analysis under the standards of Rule 61.

---

<sup>1</sup> *Desmond v. State*, 654 A.2d 821 (Del. 1994).

<sup>2</sup> See, e.g., *Desmond v. State*, 49 A.3d 1192 (Del. Aug. 9, 2012) (affirming the Superior Court's dismissal of Defendant's eighth motion for postconviction relief as procedurally barred); *State v. Desmond*, I.D. No. 9100984DI, Del. Super., June 18, 2019 (ORDER) (summarily dismissing Defendant's twelfth motion for postconviction relief); *State v. Desmond*, 2018 WL 3409916 (Del. Super. Ct. July 10, 2018) (dismissing Defendant's eleventh motion for postconviction relief); *State v. Desmond*, I.D. No. 9100984DI, Del. Super., Jan. 10, 2014 (LETTER ORDER) (denying Defendant's tenth motion for conviction relief as repetitive and procedurally barred); *State v. Desmond*, 2013 WL 1090965 (Del. Super. Ct. Feb. 26, 2013) (denying Defendant's ninth motion for postconviction relief as procedurally barred as untimely and repetitive); *State v. Desmond*, 2011 WL 91984 (Del. Super. Ct. Jan. 5, 2011) (detailing Desmond's history of postconviction applications up to and including his seventh motion under Superior Court Criminal Rule 61).

<sup>3</sup> See Def.'s Motion to Declare Delaware's Sentencing Structure Unconstitutional, at 1, D.I. 315 (May 25, 2019).

3. Rule 61 is the remedy for defendants “in custody under a sentence of this court seeking to set aside the judgment of conviction[.]”<sup>4</sup> Rule 61 requires this Court address certain “preliminary considerations” prior to addressing any substantive issues raised in a postconviction motion.<sup>5</sup> Under Rule 61(i)(2), successive motions are barred unless the defendant satisfies the pleading requirements of 61(d)(2):

(i) plead[] with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or (ii) plead[] with particularity a claim that a new rule of constitutional law, made retroactive . . . applies to the movant's case and renders the conviction . . . invalid.<sup>6</sup>

4. Defendant’s “Motion for Constitutional Decision” does not overcome the Rule 61 procedural bars and is otherwise without merit. Defendant contends that the U.S. Supreme Court’s holding in *Martinez v. Ryan*<sup>7</sup> created a right to counsel in initial collateral proceedings and that *Martinez* should apply retroactively to Defendant’s case. Defendant’s reliance on *Martinez* is misplaced. In *Roten v. State* the Delaware Supreme Court held that, contrary to Defendant’s assertions, “*Martinez* does not hold that there is a federal constitutional right to counsel in first postconviction proceedings.”<sup>8</sup> *Roten* further held that Rule 61(e), which mandates the appointment of counsel for initial postconviction proceedings, “was adopted May 6, 2013 and is not retroactive.”<sup>9</sup> The “right to counsel in first postconviction proceedings [does not] exist[] as a matter of Delaware constitutional law.”<sup>10</sup> Therefore, Defendant does not present a new rule of constitutional law, and his motion is procedurally barred and without merit.

---

<sup>4</sup> Del. Super. Ct. Crim. R. 61(a)(1).

<sup>5</sup> Del. Super. Ct. Crim. R. 61(d).

<sup>6</sup> Del. Super. Ct. Crim. R. 61(d)(2)(i)&(ii).

<sup>7</sup> *Martinez v. Ryan*, 566 U.S. 1, 9 (2012).

<sup>8</sup> *Roten v. State*, 2013 WL 5808236, at \*1 (Del. Oct. 28, 2013); see also *Washington v. State*, 2014 WL 4243590, at \*2 (Del. Aug. 26, 2014) (“The United States Supreme Court [in *Martinez*] did not hold that criminal defendants who do not raise ineffective assistance of counsel claims in their first postconviction proceedings have a right to counsel when they raise ineffective assistance of counsel claims in subsequent motions for postconviction relief.”).

<sup>9</sup> *Roten*, 2013 WL 5808236, at \*1 (emphasis added).

<sup>10</sup> *Id.*; see also *Holmes v. State*, 2013 WL 2297072 (Del. May 23, 2013) (holding that the amended Rule 61 was not applicable to motions filed before the effective date of May 6, 2013).

5. Defendant's "Motion to Declare Delaware's Sentencing Structure in Violation of the Eighth Amendment..." is likewise procedurally barred and without merit. Defendant argues that amendments to 11 *Del. C.* §§ 4204A & 4214(f)—which allow certain juveniles<sup>11</sup> and habitual offenders<sup>12</sup> to petition for modification of their sentences—should be made available to all defendants retroactively. Neither § 4204A nor § 4214 have any bearing on Defendant's sentence, as he was not sentenced as juvenile or as a habitual offender. The retroactive application of these specific statutes to unintended defendants would be inappropriate and would circumvent the General Assembly's intent. The application of these statutes to the designated classes of defendants does not violate any constitutional rule.
6. Defendant also argues that the Delaware Supreme Court in *Crosby v. State* held that a life sentence is equal to a fixed term of forty-five years, and thus, Defendant contends, his seventy-eight year sentence is unconstitutional.<sup>13</sup> Such an argument is without merit. The Delaware Supreme Court explained in *Evans v. State* that *Crosby* held that "a life sentence meant a term of forty-five years *but only* for [the then extant] [§] 4214(a) non-violent habitual offenders."<sup>14</sup> Contrary to Defendant's contentions, no court has held that a sentence exceeding forty-five years is unconstitutional. Unlike the defendant in *Crosby*, Defendant was not sentenced as a habitual offender for multiple violent felonies, and § 2414(a) is irrelevant to his case. Therefore, Defendant's seventy-eight year sentence is appropriate.
7. Defendant cannot overcome the procedural bars of Rule 61(d). Defendant presents numerous arguments that supposedly go to the alleged unconstitutionality of Defendant's sentence. These arguments are uniformly without merit. Further, nothing that Defendant presented is a new rule of constitutional law that applies retroactively.

---

<sup>11</sup> See 11 *Del. C.* §§ 4204A(d).

<sup>12</sup> See 11 *Del. C.* § 4214(f).

<sup>13</sup> *Crosby v. State*, 824 A.2d 894 (Del. 2003).

<sup>14</sup> *Evans v. State*, 872 A.2d 539, 557 (Del. 2005) (emphasis added); see also *Reed v. State*, 2015 WL 667525, at \*2 (Del. Feb. 12, 2015) ("We clarified in *Evans* that the *Crosby* holding applied to non-violent habitual offenders under Section 4214(a).").

8. Therefore, Defendant's Motion for Constitutional Decision is **DENIED**. Defendant's Motion to Declare Delaware's Sentencing Structure in Violation of the Eighth Amendment is **DENIED**.

**IT IS SO ORDERED.**

  
Richard R. Cooch, R.J.

cc: Prothonotary  
Investigative Services